October 2017

Legislative Measures Concerning Slavery in the U.S. 1942

LEGISLATIVE MEASURES

CONCERNING

SLAVERY

IN THE

UNITED STATES

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Published June, 1942

LES MESURES LEGISLATIVES
CONCERNANT L' ESCLAVAGE AUX
ETATS UNIS DE 1787 *A* 1850

A secondary question proposed by one of her "Jurors" at the soutenance of her printed Thesis at the Sorbonne March 23, 1925; translated for her pupils in American History at Frelinghuysen University by

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June 15, 1942

Price 50c

One day in May, 1619, (precisely one year before the Mayflower at Plymouth) there put in at the little port of Jamestown in the English Colony of Virginia, a Dutch trading vessel which carried in its hold 19 Negroes stolen from the shores of Africa. The captain was in need of supplies in return for which with a quantity of large leaf tobacco sufficient to cover a deal these 19 wretches were sold at auction among the inhabitants of the Colony, and the boat put to sea again, the crew well satisfied that they had done a good turn for the days record.

To tell the truth it was a day's work big with fate, for this day marked the beginning of African slavery in the colonies which were to become the United States of America.

Thus, without the fanfare of trumpets or disturbance of the elements—neither thunder, lightning nor rumbling of earthquake—there entered into American life a fact, silent and unforeseen which was destined nevertheless to embroil the entire future, embitter friendly relations of brothers, of families, of states and finally to stir up a fratricidal war, the most bloody, the most devastating in all previous history.

And yet this fact at first was quite simply a local patriarchal custom, subject to the domestic regulations of the state or of the central power of the federated states. Thus we see that the custom soon disappeared in Massachusetts without opposition or discussion. They said quite simply that slavery was irreconcilable with their state constitution. Vermont never permitted it. Pennsylvania decreed that all children born after 1776 should be free. Other states likewise soon brought about the gradual abolition of a custom generally recognized as vicious and altogether antagonistic to generous principles. Thomas Jefferson in his first draft of the Declaration of Independence accuses George III in regard to Article XII of the Treaty of Utrecht by which an English company was guaranteed the exclusive right of importing slaves from Africa to American

ports: on several occasions the English legislatures in North America had made the attempt to arrest the slave trade but were prevented by the royal veto. "He (the king has waged cruel war against human nature.... determined to keep open a market where men should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce." Note also, a letter from Jefferson to Condorcet (No. 231 Jefferson collection, MSS. Dept. Library of Congress, Washington, D. C.) Philadelphia, August 30, 1791.

"I am happy to be able to inform you that we have in the U. S., a Negro son of a native African, who is a mathematician of great ability. I have procured for him employment with one of our chief engineers who is drawing up the plan of the new federal city on the Potomac River: in his leisure moments he has written an almanac for next year which he has sent me in his own hand writing and which I enclose herewith. I have seen some of his solutions of extremely complicated geometric problems showing great mathematical genius. He is, let me say, a very worthy and respectable member of society and a free man. I shall be very happy to note similar cases of moral excellence so numerous that one might prove that the lack of talent observed in some individuals of this group is merely the effect of their degraded condition and not at all the result of any difference in the structure of parts on which depends the intellect and higher qualities of the soul."

In the same general tone, is a letter of George Washington to Phylis Wheatley, the African slave of a family in Massachusetts. President Washington thanks the young poetess for a copy of her book of verses and pays her a warm compliment upon her excellent achievment.

On the very eve of the Constitutional Convention the Ordinance of 1787 was to take account of the extension of slavery in a manner unequivocal, energetic, courageous and momentous in its consequences. This

ordinance has the distinctive mark of being the first legislation of Congress as a sovereign body, having power to own and regulate a territory of about 430,000 sq. miles in extent—equal in area to the surface of France, Spain and Portugal combined. This land known as the Northwest Territory became the property of the United States by cession of claims of those states whose western borders were not clearly defined by Charter. New York and Virginia followed by other states of smaller pretentions ceded their claims before the convention of 1787. Thus, the Congress under the Articles of Confederation, which did not authorize it to hold any property, found itself the inheritor of the same problem which the British government had found so perplexing. It was necessary to govern as an absolute power a distant colony without a voice and without representation.

The preliminary plan of which Jefferson was the author was proposed April 23, 1784. It arranged for the establishment of 17 states to the North and to the South of the Ohio River which were to remain forever a part of the United States, should have a republican form of government, and the ordinance creating these states was to be a permanent pact unalterable save by mutual consent between the Federal government and that of the State here formed. It was affirmed in a declaration memorable for alltime that "after the year 1800 there shall not be in any of the said states, either slavery or involuntary servitude except as a punishment for crime of which the person shall have been duly convicted." In the final phrasing adopted in 1787 of which Nathan Dane of Massachusetts was chief scribe, the prohibition of slavery was made perpetual, but at the same time there was added a new phrase, viz., a fugitive slave bill or clause to the effect that the states should be legally bound to return "persons held for service or labor by the laws of another state." Note that the word slave is avoided by a paraphrase.

The Ordinance as finally adopted comprised instead of the 17 states contemplated in the Jefferson plan, only the land north of the Ohio River from which was subsequently formed the states of Ohio, Indiana, Illinois, Michigan and Wisconsin. Although the power of Congress over this territory was absolute in theory, it was necessary to exercise this power in such a way as to encourage self government on the part of the states and by granting them local autonomy as soon as possible.

The importance of the Ordinance of 1787 lies in the fact that it was copied insubsequent legislation for the organization of the territories as the foundation and principle of the American system. Again it is worthy of remark that so far as there was any notice taken of slavery even as a custom, there was the evident purpose at this time to prevent its spread if not to abolish it altogether.

In drawing up the Constitution in the Convention which met at Philadelphia from May 14 to September 17, 1787, the words "Slave," "Slavery" and Slave Trade were carefully avoided although evidently present in the conscious minds of all; further proof that the conception later alleged by the Supreme Court in the Dred Scott decision that the slave was a chattel (a "thing" not a person) was not from the beginning the conception of the fathers of the country. In the words of the Constitution the slaves were "persons held to service or labor under the laws of any state." The "Trade" was "the importation of such persons as any of the states already existing should think proper to admit." That is to say in according to the "states already existing" sovereign rights over their predetermined internal customs, the fathers of the constitution had not the attitude of favoring slavery as an institution and very adroitly put upon it all the restrictions compatible with the leading idea of the day that the union of the 13 colonies was altogether voluntary and that the Federal government possessed only the powers granted to it by the states.

However, the fact of slavery as a skeleton at the feast had already become an embarrassment to the fathers of the country, requiring and exacting many compromises, much confusion in trying to reconcile the convenience of the moment with those principles elaborated in the Declaration of Independence; and it was again Jefferson who said: "I tremble for my country when I remember that God is just." He was right.

The first measure of fateful consequences which the presence of Slavery demanded was the provision (Article I, Section 2) of the Constitution in regard to apportionment of representation and direct taxes among the states of the union. "Representatives and direct taxes shall be apportioned among the several states included within this Union, according to their respective numbers which shall be determined by adding to the whole number of free persons including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons." Since the only persons imaginable outside of the free, the indentured and the Indians must be the slaves from Africa, here was a concession of prime importance to the slave holders who possessed a considerable number of retainers, since a county or voting precinct in the Black Belt in reality gave representation only to the whites altho three-fifths of the slaves there were reckoned in the basis of apportionment. Thus, the proprietor of 500 slaves was worth in his single vote as much as 301 voters at the North in making up the House of Representatives, a manifest injustice.

Again, Article I, Section 9: The Compromise in regard to the Slave Trade, while on its face it seemed to hold the balance equally between the adversaries and the partisans of the Trade, in truth it gave all the advantage to the latter, because the phrase "Shall not be prohibited prior to 1808," although it constrained the Congress to give free rein to the importation of slaves for 20 years, it did not stipulate at all that such importation should cease at this juncture.

Again also Article IV, Section 2, makes once again concession to the Slave power without using the word "Slave." "No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered upon claim of the party to whom such service or labor may be due." We have seen that the foundation of such a fugitive slave law had already been voiced in the Ordinance of 1787, but it was only after 1850 that this principle became a burning question. The Constitution had provided for the extradition of fugitive criminals as well as of fugitive slaves; but in the case of criminals the action of giving them up devolved upon the governor of the state to which they had fled. As to slaves the constitution said nothing, but the Congress in 1793 decreed that this duty should rest with the Federal judges or upon local magistrates of the state. Then several states passed "Personal Liberty Laws" forbidding or restraining the action of their magistrates in such cases.

Now the Act of 1850, transferred the jurisdiction of these cases to the Federal courts and to the marshals of the United States, imposed penalties for failure to deliver and refused trial by jury. In consequence, the antislavery sentiment at the North flared out in white heat while slave hunting became more and more brutal.

Men said: "No longer are there any free states. We are all obliged to be at the service of the Slave Power." Even as the immortal Lincoln cried: "The country cannot exist half free and half slave. The house divided against itself cannot stand."

But of all the measures concerning slavery, the most indirect and in appearance the most remote from slavery, but at the same time, the most important in results is found in Article I, Section 3, of the Constitution, known as the Connecticut Compromise, because it was proposed by the delegates from that state in the convention of 1787. Although at this time it

seemed to settle forever the question of representation of states in the general Federal system by giving two senators for each state whether large or small, nevertheless, it was to become the reason and ground of a terrible struggle caused by the policy of slavery. It was slavery that tipped the scales every time a new state presented itself for admission into the Union of States. It was slavery that fostered the dream of an empire from the creation of new born states out of the big Republic of Texas—a dream which turned to reality in the Mexican War and which looked to augmenting enormously the slave power in the Senate. The emigration movement, was setting always to the West and Northwest rather than to the South. Consequently the House of Representatives based on population in spite of the three-fifths surplus advantage granted the Slaveholders, soon showed a solid majority in favor of free labor. But in the Senate, while the balance between the states of the North and of the South remained almost even, the South could gain the ascendancy there quite easily by the support of a handful of Senators of the North, who might be indifferent or subservient to the doctrine of non interferance in State Sovereignty.

Now so long as the labor of the slave was altogether domestic and the relation between master and slave remained patriarchal, the only condemnation brought against slavery was purely philosophic from advanced thinkers at the South as well as the North. Nothing could be stronger in this regard than the words and ideals of Jefferson, who often refers to the slaves as "our brothers," and who reproved the notion of "beast of burden" as vigorously as the most ardent of Northern abolitionists did later. In fact, Jefferson in France, manifested great interest in the tenets and purposes of the "Amis des Noirs" society, explaining that as a representative of the United States, he was forbidden to take a more active part in cooperation with them.

In 1793, there was brought out an invention—that of Eli Whitney, for separating the seed from the fibre

of the cotton boll; it was the cotton gin which produced an industrial revolution in the United States and the dream of a school teacher from Connecticut that riveted the chains of slavery more solidly than ever before. At the epoch of the Constitution, men did not believe that the cultivation of cotton could be made profitable for the South. The "roller gin" by slave labor could clean only a half dozen pounds per day. In 1784, eight bales of cotton unloaded at Liverpool from an American boat were seized in the belief that so much cotton could not be the product of the United States. Eli Whitney of Connecticut, who was teaching a school in Georgia having observed from time to time the toilsome labor of the slaves, conceived the idea of a mechanical saw to pick the cotton by dredging it across metal combs too close to admit the seeds. One slave could now gin a thousand pounds per day. The exportation of cotton jumped from 189,000 lbs. in 1791 to 21,000,000 lbs. in 1801 and doubled itself again in three years more. Immediately, cotton was king! All of a sudden also, men envisaged the enormous wealth in the possession of one or more slaves and the profit of the slave trade became the most seductive lure in the world. Starting from this moment the slave power became the most important question in the politics of the United States. Having become now commercial and political, the system lost almost on the instant its patriarchal character. Here commenced the mad struggle for supremacy in the Senate, the battle to the death of the states who would favor slavery—a struggle that would not end till the bloody war of secession and all "the wealth piled by the bondman's toil was sunk and every drop of blood drawn by the lash was paid by another drawn with the sword."

When Thomas Jefferson bought from Bonaparte the vast territory of Louisiana, slavery existed there already, supported by the laws of France and of Spain. It was the prudence of "laissez faire" that Congress tacitly ratified existing laws and customs and slavery not only remained legal but extended itself more and more

across the territory. The State of Louisiana, from this territory, was without question admitted as a slave state in 1812. But when Missouri the second state carved from this territory presented herself for admission likewise as a slave state, it was not without opposition on the part of states of the North and Northwest, where labor was free. Seeing that the equilibrium between the number of antislavery and proslavery states was almost perfectly balanced, although the population of free labor states as we have seen mounted far beyond that of the South, the proposed admission of Missouri was promptly authorized by the Senate representing states, but rejected by the House, which represented population. This deadlock continued several years until 1820 when the admission of Maine at the North, as a free state reestablished the threatened equilibrium and the famous "Missouri Compromise" seemed to calm for a moment the vexing question of slavery. This Compromise of 1820, however, like those of the Constitution, wielded once again the advantage of the moment to slave power with an elusive promise of recompense in the future. Slavery was to be excluded forever in the territory to the north of parallel 36° 30'. Missouri which was wholly to the north of this line was to be admitted **with** slavery and although not expressly stated every one understood that states due to be formed from territory to the South of 36° 30' should be admitted **with** slavery if they so desired. In fact, Arkansas entered thus in 1836.

So it seemed that the metes and bounds of slavery had been established forever; for states, by the Constitution and for territories, mathematically by the line 36° 30'. But, as often happens, delicate social equilibriums carefully buttressed by such compromises and such laws, not rarely find themselves incapable of resisting the test of the passions and interests of rival men. We shall see it in the denouement.

The war with Mexico for possession of the territory of Texas, which had already declared herself inde-

pendent, was fought (1847-8) solely for the purpose of giving to the Slavocracy, power of expansion in the Senate. Texas was admitted in 1845 as a slave state of course, but, on the condition exacted by the North that only a single state should be molded from its vast terrain. The Southern expansionists had figured out at least 4 new states affording 8 sovereign senators for their party.

In 1850, California, having formed a Constitution by which slavery was prohibited, demanded admission into the Union. Now "Squatter Sovereignty" (i.e., the will of those who have squatted or camped on the ground) a policy invoked by those who wanted to dodge the rigorous application of line 36° 30' **against** slavery, was found at the moment, in reality, working out to the disadvantage of its creators. Moreover, California was for the most part, North of parallel 36° 30'; and so whether by the **Wilmot Proviso** which aimed to forbid slavery in all territory acquired or due to be acquired by Congress in the future, or by the Missouri Compromise which expressly declared that there should be no slavery to the north of line 36° 30', or yet against Squatter Sovereignty which left it to the inhabitants of a territory whether they would or would not allow slavery, Calif. seemed to have every right on her side to be admitted without slavery as she wished. But again the slave interests extorted some grand concessions in the famous Compromise of 1850. California was admitted as she desired, but, the organization of the rest of the cession from Mexico had to be without restriction in regard to slavery; and then the "Fugitive Slave Law" which imposed upon all the states the duty of capturing and returning to their masters any slaves who might seek refuge therein, was made more rigorous than ever before.

The Compromise of 1820, strangely enough, was not brought before the Supreme Court for the test of its constitutionality until 30 years after in the famous case of Dred Scott. Scott was a slave of Missouri, whose

master had taken him into a free state. He brought suit for his liberty according to the law of the state where he found himself. In the meantime, having been sold to a citizen of another state, he transferred his suit to the Federal courts which have jurisdicion in cases between citizens of different states. By appeal, the case came before the Supreme Court from which the remarkable decision was handed down, Chief Justice Taney presiding, that neither a slave nor the descendant of slaves could have the rights of citizens; that they could neither sue in the courts nor be recognized under the law save as chattels, i. e. property or possession of a master—**not** as a person or individual. Furthermore, the opinion of the chief justice rendering the decision went on to attack the validity of the legislation in the Act of 1820, alleging that one of the functions of the Congress was the protection of property rights; that slaves had been recognized as property by the Constitution and that Congress was bound to uphold slavery in the territories quite the reverse of prohibiting it. This decision quite frankly threw down the gauntlet between the two governmental theories in the United States; the North, holding that the Constitution regarded slaves as "persons held to service or labor" under the laws of certain states, and that the function of Congress was the protection of **Liberty** quite as much as the protection of property; and that Congress was bound to prohibit slavery in the territories, quite the reverse of protecting it.

The South on the otherhand, maintained that the duty of Congress to protect slavery was now affirmed by the Supreme Court, that the republicans of the North were rejecting the only peaceable interpretation of the Constitution and that the South could no longer submit even to "Squatter Sovereignty" leaving it to the inhabitants to decide for territories. You see the impasse. Nothing but the arbitrament of arms could untangle the situation; after which, Amendment 14 of the Constitution was to define the law of citizenship in a manner so comprehensive and clear that it must settle for all time

the question involved in the Dred Scott decision by establishing forever the **status** of citizens of the United States:

"All persons born or naturalized in the United States are citizens thereof and of the States in which they reside.

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